

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

201904008

Originating Department:		Executive Office	
Contract or Grant Administrator:		Tawni Helms, Administrative Coordinator	
Contractor's / Agency Name:		Whatcom Humane Society	
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
		If No, include WCC: _____ (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement?		If yes, grantor agency contract number(s):	
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		CFDA#: _____	
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):	
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Is this contract the result of a RFP or Bid process?		Contract Cost Center:	
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, RFP and Bid number(s):		RFP 16-44 4300	
Is this agreement excluded from E-Verify? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> If no, include Attachment D Contractor Declaration form.			
If YES, indicate exclusion(s) below:			
<input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Work related subcontract less than \$25,000. <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA. <input type="checkbox"/> Interlocal Agreement (between Governments).			
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>398,130</u>		Council approval required for; all property leases, contracts or bid awards exceeding \$40,000, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when: 1. Exercising an option obtained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, professional services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies or equipment included approved in the budget. 4. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.	
This Amendment Amount: \$ _____			
Total Amended Amount: \$ _____			
Summary of Scope: Whatcom Humane Society will provide animal control and shelter services to Whatcom County. Services include but are not exclusive to: housing, administering regulations, enforcement and penalties pursuant to County ordinances, statutes and local code as described in Exhibit A.			
Term of Contract: One Year		Expiration Date: 04/30/2020	

Contract Routing:	1. Prepared by: <u>Twh</u>	Date: <u>04.12.19</u>
	2. Attorney signoff: <u><i>Cue</i></u>	Date: <u>4/15/19</u>
	3. AS Finance reviewed: <u><i>Bennett</i></u>	Date: <u>4/12/19</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____ ✓	Date: <u>4-15-19</u>
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

Whatcom County Contract No.
201904008

CONTRACT FOR SERVICES AGREEMENT
Whatcom Humane Services

Whatcom Humane Society, hereinafter called **Contractor**, and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 3 to 7,
- Exhibit A (Scope of Work), pp. 8 to 12,
- Exhibit B (Compensation), pp. 13 to 14,
- Exhibit C (Budget), pp. 15,
- Exhibit D (E-Verify Declaration) pp. 16,
- Exhibit E (Certificate of Insurance) pp. 17,
- Exhibit F (Brady Policies and Protocols), pp. 18-24.

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 1st day of May, 2019, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30 day of April, 2020.

The general purpose or objective of this Agreement is to: provide animal control and shelter services throughout unincorporated Whatcom County, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed Three Hundred Ninety Eight Thousand One Hundred Thirty. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 20 ____.

CONTRACTOR:

Whatcom Humane Society

Laura Clark, Executive Director

STATE OF WASHINGTON)if
) ss.
COUNTY OF _____)

On this __ day of _____, 20 __, before me personally appeared Laura Clark to me known to be the Executive Director of Whatcom Humane Society and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at _____.
My commission expires _____.

GENERAL CONDITIONS

ANIMAL CONTROL SERVICES AGREEMENT BETWEEN WHATCOM COUNTY AND WHATCOM HUMANE SOCIETY

THIS AGREEMENT is made this _____ day of May 1, 2019 by and between **WHATCOM COUNTY**, a municipal corporation, hereinafter referred to as the "County", and Whatcom Humane Society, hereinafter referred to as the "Contractor" for the purpose of animal control services as described herein.

1. **Intent:** The intent of this document is for the County to obtain animal control services such as housing, administering regulations, enforcement and penalties pursuant to the following statutes and local code:

RCW 9.08 Crimes Relating to Animals

RCW 16.04 Trespass of Animals

RCW 16.08 Dogs

RCW 16.10 Dogs-Licensing- Control Zones

RCW 16.24 Stock Restricted Areas

RCW 16.52 Prevention of Cruelty to Animals

RCW 16.54 Abandoned Animals

RCW 16.68 Disposal of Dead Animals

RCW 16.70 Control Of Pet Animals Infected With Disease Communicable To Humans

WCC 6.04 Animal Control

WCC 6.08 Restriction of Livestock

2. **Description of Services:** The Contractor agrees to provide and the County agrees to accept the services as described in Exhibit A attached hereto and incorporated herein by reference.
3. **Consideration:** As consideration for the services provided, the County agrees to reimburse the Contractor as set forth in Exhibit B attached hereto and incorporated herein by reference.
4. **Term and Extensions:** The term of this Agreement shall be for a period of twenty four months beginning January 1, 2017. The term shall be as stated regardless of the date of signature. At the conclusion of the contract, the County may extend the agreement for two consecutive two year terms. At the conclusion of the contract and any extension, the contract shall be reopened for bidding. The County reserves the right to terminate the contract at any time for substandard performance or non-compliance with contract terms.
5. **Records and Reports:** The Contractor agrees to maintain all books, records, documents, reports and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed under this Agreement, including a complete system of records that shall show the kinds and number of animals in its custody obtained from the unincorporated areas of Whatcom County, the locations where such animals were found, the reasons for confinement and final disposition. On a quarterly basis the Contractor shall provide the County Executive, or his or her designee, a report detailing all fees collected and all expenses and cash balances, with a comprehensive year-end report due thirty (30) days after the end of the fiscal year. The Contractor also agrees to provide the County Executive, or his or her designee, a quarterly report detailing the levels of service provided over the quarter, together with a report on the license program in accordance with Section 3.1 in Exhibit A.

All income and expenditures shall be recorded in accordance with generally accepted accounting principles. The financial records shall be subject to audit by any governmental agency with jurisdiction at a time and place mutually convenient to the parties.

6. **Right to Review:** This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice, and may include, but is not limited to, onsite inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 3 years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.
7. **Contracts with other Governmental Jurisdictions:** The County agrees to permit the Contractor to extend its services within Whatcom County. The County does not agree to provide a financial subsidy, either directly or indirectly to any city or any other local government. The Contractor guarantees that it will manage its affairs so that any agency contracting with it for services bears that agency's pro-rata share of costs incurred.
8. **Licensing:** The contractor agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals. The Contractor shall also be responsible for obtaining any necessary approvals and permits and shall be given a reasonable period of time to bring operations into compliance with all laws and standards.
9. **Communications:** Communications between the Contractor and the County shall be addressed to the regular places of business. In the case of the Contractor, the address shall be:

Director, Whatcom Humane Society
 Laura Clark or designee
 Whatcom Humane Society
 2172 Division Street
 Bellingham, WA 98226
 Phone: 360-733-2080-x3026

In the case of the County, communications shall be sent to:

Whatcom County Executive's Office
 Administrative Coordinator
 Tawni Helms or designee
 311 Grand Ave, Suite 108
 Bellingham, WA 98225
 Phone: 360-778-5208

10. Administration of Agreement:

- a. This agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification, and operation of facilities and programs, and accreditation and licensing of individuals.
- b. The County hereby appoints, and Contractor hereby accepts, the Whatcom County Executive, and her or his designee, as the County representative, hereinafter referred to as the Administrative Officer, for purposes of administering the provisions of this Agreement, including the County's right to receive and act upon all reports and documents, and any auditing performed by the County related to this Agreements. The Administrative Officer for purposes of this Agreement is:

Tawni Helms
Administrative Coordinator
Whatcom County Executive's Office
311 Grand Ave, Suite 108
Bellingham, WA 98225
Phone: 360-778-5208

11. **Relationship to Parties:** The parties intend that an independent Contractor/County relationship will be created by the Agreement. The County is interested only in the results to be achieved; the implementation of services will lie solely with the Contractor. Neither the Contractor, nor any agent, employee or representative of the Contractor shall be deemed to be an agent, employee, or representative of the County for any purpose. Employees of the Contractor are not entitled to any of the benefits the County provides for County employees. The Contractor will be solely and entirely responsible for its acts, and for the acts of its agents, employees, subcontractors or others during the performance of this Agreement. In the performance of services herein contemplated, the Contractor is an Independent Contractor as to the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the County and shall be subject to the County's general rights of inspection and review to secure the satisfactory completion thereof.
12. **Indemnification and Hold Harmless:** The Contractor agrees and covenants to indemnify, defend and save harmless the County and those persons who were, now are, or shall be duly elected or appointed officials or members or employees thereof, hereinafter referred to as the County, against and from any loss, damage, cost, charge, expense, liability, claim, demand or judgment, of whatsoever kind or nature, whether to persons or property, arising wholly or partially out of any act, action, neglect, omission or default on the part of the Contractor, his subcontractors, and/or employees, except to the extent such injury or damage shall have been caused by or resulted from the negligence of the County. In case any suit or cause of action shall be brought against the County on account of any act, action, neglect, omission or default on the part of the Contractor, his agents, subcontractors, and/or employees, the Contractor hereby agrees and covenants to appear and assume the defense thereof and to pay any and all costs, charges, attorney's fees and other expenses and any and all judgments that may be incurred or obtained against the County.
- In the event the County is required to institute legal action and/or participate in legal action to enforce this indemnification and hold harmless clause, the Contractor agrees to pay the County's legal fees, costs and disbursements incurred in establishing the right to indemnification.
13. **Social Security and Other Taxes:** Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income, other form of taxes, fee, licenses, excises, or payments required by any City, County, Federal or State legislation which are now or may, during the term of this Agreement, be enacted as to the Contractor and all persons employed by the Contractor as to all duties, activities, and requirements by the Contractor in performance of the work pursuant to this Agreement and shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules and regulations that are now and may be promulgated in connection therewith.
14. **Proof of Insurance:** The Contractor shall maintain the following insurance coverage and shall provide the County with certificates of insurance, naming the County as additional insured on all the following policies:
- a. *General Liability:* Comprehensive general liability, premises, operations, contractual and personal injury coverage, for a minimum of \$1,000,000.
 - b. *Automobile Liability:* Comprehensive bodily injury and property damage combined limit of at least \$1,000,000.
 - c. *Automobile Collision:* Coverage adequate to replace vehicles.
 - d. *Law Enforcement Professional:* False arrest, assault and battery, unlawful search and seizure, and related law enforcement coverage, for a combined policy limit of at least \$1,000,000.

The Contractor's insurance shall be considered primary, and it shall waive all rights of subrogation. The County's insurance shall not be required to contribute in any way.

15. **Suspension/Termination:** The County reserves the right to terminate the Agreement at any time for substandard performance or non-compliance with the terms of this Agreement. If the Contractor fails to comply fully with the terms and conditions of this Agreement, the County may pursue such remedies as are legally available, including but not limited to, the suspension or termination of the Agreement in the manner specified herein.
- a. Suspensions: If either party is unable to substantiate full compliance with the provisions of this Agreement, or full cooperation in its performance, the non-breaching party may suspend the Agreement pending corrective acts or investigation, which suspension shall be effective upon seven (7) days written notification to the other party.
 - b. Termination – Just cause: For just cause, this Agreement may be terminated by either party hereto upon thirty (30) days advance written notice to the other party unless circumstances warrant the immediate termination of the Agreement. Said written notice shall include a detailed statement of “just cause.”

16. **Non-Discrimination in Employment:** The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, age, marital status, Vietnam era or disabled veteran status, or disability. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, age, marital status, Vietnam-era or disabled veteran status, or disability, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, Vietnam-era or disabled veteran status, or disability, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships without employees.

17. **Non-Discrimination in Client Services:** The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, Vietnam-era or disabled veteran status, or disability, or deny an individual or business any service or benefits under this Agreement, or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt of any service or services or other benefits provided under this Agreement; or, deny an individual or business an opportunity to participate in any program provided by this Agreement.

18. **Assignment and/or Subcontracting:** The performance of all activities contemplated by this Agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

19. **Modification:** No change or addition to this Agreement shall be valid or binding upon either party unless such change or addition is in writing, executed by both parties.

20. **Waiver:** Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of

this Agreement or to exercise any option herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect

21. **Venue and Choice of Law:** In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

22. **Severability:** If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

23. **E-Verify:** The E-Verify contractor program for Whatcom County applies to contracts of \$100,000 or more and sub contracts for \$25,000 or more if the primary contract is for \$100,000 or more. Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit." Contractor will review and enroll in the E-Verify program through this website: www.uscis.gov

24. **Entire Agreement:** This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

Exhibit A **SERVICES**

A-1. Description of Services: The Contractor agrees to provide the following described services:

A1.1. *Operate Animal Shelter Facility:* The Contractor shall provide and operate such animal control shelter and care facilities as may be necessary to receive, maintain, care for and provide for the appropriate disposition of all animals that come within the legal animal control authority and responsibility of the County.

A1.2. *Conduct Animal-Related Investigations and Enforcement:* The Contractor shall provide all necessary investigation, enforcement, testimony, follow up and administrative services, including hearings, as may be required to fulfill the County's legal responsibility regarding animals, violations of law and animal control issues.

A1.3. *Conduct Animal Control Patrol and Impoundment:* The Contractor shall provide all necessary services associated with the control of strays, dangerous or unsupervised animals including receiving reports, responding to complaints, addressing animal-related issues, receiving and impounding animals and conducting such activities as may be reasonably necessary to ensure the effective control of animals that come under the legal authority and responsibility of the County.

A1.4. *Administer Animal Licensing Programs:* The Contractor shall provide for the administration and operation of all animal licensing programs necessary for the County to fulfill its legal licensing responsibility under state law or county ordinance.

A-2. Legislation: The Contractor shall provide continuing assistance and advice to the County on the updating and revision of its animal control code.

A-3. Animal License Program: The Contractor is solely responsible for administration of all licensing programs.

A3.1. *License Issuance:* The Contractor shall issue animal licenses as required by the Whatcom County Code, shall collect the required fees, and shall maintain a comprehensive set of records on all animal licenses issued by it. At the close of each month the Contractor shall submit a report to the County Executive of licenses issued. The report shall include a list of each license sold showing the name and address of the owner, any associated fees received by the Contractor and the description of the animal licensed. Similar information shall be submitted for all animals impounded.

A3.2. *Stray Animal Licenses:* Stray animals picked up in the County and sold or adopted to private individuals residing in the County shall not be released to their new owners until a valid County license is obtained.

A3.3. *Education:* Education programs for the general public to encourage the licensing of dogs shall be conducted at the discretion of the Contractor at no additional cost to the County.

A3.4. *Purchase Point:* The Contractor shall have an outlet where people may purchase required licenses for their animals.

A-4. Animal Shelter Facility and Operations:

A4.1. *Shelter Hours:* The shelter or a shelter representative shall be available for contact 24 hours a day, seven days a week on an emergency-response basis. The shelter must be open at least thirty (30) hours per week on a normal basis. Current hours the animal shelter facility is open to the public are Wednesday through Saturday from 10:00 noon to 6:00 p.m. and Sundays and Mondays from 11:00 a.m. through 5 p.m. The animal shelter is currently closed to the public on Tuesdays and major holidays. Animal care staff and animal control staff are available to respond to emergencies at the animal shelter facility 7 days a week, 365 days per year.

A4.2. *Telephones:* Telephones must be answered during regular business hours and there must be an emergency number or rotating contact whereby the shelter may be contacted 24 hours a day, seven days a week on an emergency-response basis.

A4.3. *Animal Shelter Facility:* The shelter shall have an adequate number of dog kennels and cat cages, isolation facilities for sick dogs and cats, quarantine facilities for biting, dangerous or injured animals which are not necessarily sick, and access to large animal housing. The animal shelter shall be maintained in a clean and sanitary condition and the Contractor will not permit any condition to exist which might constitute a public nuisance. The kennel shall comply with the standards set forth in the Humane Society's Uniform Standards Guidelines (HSUS) for the operation of the animal shelter. The Contractor shall provide a facility that has year round fenced and drained hard surface pads to be used as outdoor exercise yards for the animals. At a minimum there shall be two (2) exercise yards with minimum dimensions of 8 x 20 feet that comply with HSUS guidelines. The outside exercise areas are to be located within viewable distance of Contractor's employees to maintain security of the animals within. The facility site shall be in conformance with the local zoning regulations and shall comply with all federal, state and local regulations.

A4.4. *Acceptance and Care of Animals:* The best possible care and treatment shall be given to all animals held in custody. Adequate housing and food shall be provided and the shelter shall not be overpopulated. The Contractor shall be responsible for the care, medical treatment, medication and inoculation required to assure the humane treatment of the animals received into the Contractor's facility. Any injured animals coming in to the shelter must be seen by a veterinarian for treatment or decision regarding euthanasia within 24 hours of entry. The shelter shall accept unwanted small domestic pets (i.e., dogs and cats) from County residents, including strays and owner-released animals for humane euthanasia. The Contractor shall also accept pigs, goats, sheep, cattle, horses, ferrets, llamas, rabbits, hamsters, guinea pigs, snakes and domestic birds and other animals as circumstances require.

A4.5. *Adoption:* The Contractor shall be responsible for making every reasonable effort to prepare and present animals for adoption by the public and to facilitate the same. All animals released for adoption shall be vaccinated and either spayed or neutered. Spaying or neutering may be suspended depending on the health and age of the animal at the discretion of a licensed veterinarian associated with the Contractor.

A4.6. *Disposal of Unclaimed Animals:* The Contractor shall provide for the humane disposal of unclaimed animals after holding them for no fewer than 72 hours, unless sickness or injury requires earlier disposal. Under no circumstances shall unadopted animals be sold for purposes of medical research or other activities, which may harm them. The Contractor shall be responsible for maintaining animals beyond the minimum 72-hour period as may be required for the completion of any judicial process or to the extent required by law.

A4.7. *Euthanasia:* Humane euthanasia and disposal of unwanted animals must be by lethal injection of sodium pentobarbital or other approved method administered by a licensed veterinarian or by an agency which has obtained a Washington State and Federal Drug License and certification for staff to administer same.

A4.8. *Certification:* The Contractor assumes full responsibility for complying with all licensing, certification, or accreditation as required by law including regulation of facilities, programs, and euthanasia certification and licensing. All animal control and animal care managers and supervisors, and the executive director will be certified to assist with euthanasia under the direction of a veterinarian.

A4.9 *Volunteer Program:* The Contractor will actively promote a volunteer program to assist with the animals, supported through the shelter as described below. Any and all volunteer programs outlined herein, created during the term of the agreement, and/or affiliated with the Contractor must be in compliance with state employment laws, and subject to any and all special insurance requirements.

1. Volunteers must be at least 12 years of age to volunteer at the shelter.
2. Students between the ages of 12 and 16 must be accompanied by an adult.
3. All volunteers must attend a two hour volunteer orientation and complete animal handling classes before working directly with the shelter animals.
4. Volunteers are supervised and managed by the WHS Volunteer Coordinator.

A-5. Enforcement and Field Operations: The Contractor shall be fully responsible for taking animals into custody, transportation of animals, administration and enforcement of animal control regulations, investigation of animal control complaints, as well as imposing penalties in accordance with Whatcom County Code and the Revised Code of Washington. Full services are required in all of rural Whatcom County, including Point Roberts, Lummi Island, and Newhalem. Dog control zones are established in all of the unincorporated areas of Whatcom County except areas designed R-5, R-10 and AG.

A5.1. *Enforcement Hours:* The Contractor shall provide for a minimum/maximum range of field operation services each week to include patrol, enforcement, investigation of complaints and impoundment of animals, including Sheriff approved after-hours call-outs. The County recognizes that the amount of field operation hours may vary and, therefore, requires that the Contractor's animal control officers provide a minimum of 80 hours of field operation services per week and be capable and responsive to levels of activity, including Sheriff approved call-outs, that may require up to 120 hours per week, as need dictates. Within this inclusive range, the Contractor shall be responsible for all such services.

A5.2. *Emergency Response:* With regard to animal control enforcement, the Contractor shall be available twenty-four (24) hours a day, seven (7) days a week, on an emergency-response basis. Emergency response shall be for:

1. Vicious animals, animals running at large, or animals that may reasonably constitute a hazard to persons or other animals or threaten public safety.
2. Injured or very sick domestic animals.
3. Domestic animals in distress, such as those caught in traps.
4. Hardship cases or law enforcement (Sheriff) assistance matters.

Note: The Sheriff's shift sergeant or duty staff officer shall review and authorize any questioned after-hours call-out of Contractor's staff.

A5.3. *Complaints and Referrals:* The Contractor shall investigate and follow up on all animal control complaints referred to it by the public, appropriate officers, health services or other entities where the complaints constitute violations of Whatcom County Code Title 6.

A5.4. *Distressed Animals:* Animals in distress, including hardship cases such as owner arrest or house fires, must be taken to the shelter facilities. Vicious animals at large must be impounded. If distressed or vicious animals cannot be safely impounded, they may be destroyed.

A5.5. *Hazard Removal:* Dead domestic animals whose owners are unknown and which constitute traffic hazards on County roadways must be removed. In other instances where violations of the Code are observed, the animal shall be impounded.

A5.6. *Disposal of Dead Animals:* The Contractor shall pick up and dispose of small or large dead domestic animals from County roads within 24 hours of notification.

A5.7. *Vehicles and Equipment:* Contractor shall own and maintain the number and type of vehicles necessary to provide services as described. Contractor shall maintain appropriate insurance on all vehicles.

A5.8. *Court Appearances:* The Contractor's personnel may, on occasion, be required to appear in court in support of enforcement action. The Contractor shall not receive additional compensation under this Agreement for these appearances.

A5.9. *Quarantine Services:* The Contractor shall provide quarantine services within incorporated and unincorporated areas of Whatcom County in accordance with the procedures outlined in WCC 6.04.140 Control of Rabid or Potentially Rabid Animals, when requested by the Health Department or when an animal of a species which may transmit disease through its saliva, bites and breaks the skin of any person. Specifically, the Contractor shall:

1. Notify the Health Department of:
 - unusual behavior of a recently captured domestic animal;

- unusual behavior or death of a quarantined domestic animal; or
 - any non-domestic animal bite report if it is of a species which may transmit disease through its bite.
2. Notify caretakers of a quarantined animal of their duty to report unusual behavior or the death of a quarantined animal.
 3. Follow-up on the status of a quarantined animal at the end of the quarantine period.
 4. Obtain authorization from the Health Department prior to euthanizing any quarantined animal.
 5. Remove and transport the head of any potentially rabid animal only as directed by the Health Department.
 6. Assist in the capture and transport of potentially rabid bats upon request of the Health Department.

A-6. Animal Control Officers:

A6.1. *Authority:* The Contractor shall provide animal care and control services pursuant to Contractor's authority under state and county law on behalf of the County.

A6.2. *Qualifications and Training:* The Contractor assumes full responsibility for the selection, qualification, and training of its animal control officers. Contractor shall ensure all animal control officers are properly authorized pursuant to Washington State law to carry out their duties and responsibilities. Proof of current authorization for all animal control officers working for Contractor shall be provided to the County upon 1) issuance of statutorily-required authorization or 2) renewal of statutorily-required authorization, or 3) otherwise upon request of the County.

A6.3. *Patrol Strength:* The Contractor shall provide at least a minimum of eighty (80) hours and up to one hundred twenty (120) hours weekly of field service time to carry out its obligations under this Agreement and shall ensure that sufficient staff and vehicles are available Monday through Saturday between the hours of 9:00 a.m. and 5:00 p.m. or on an alternate schedule approved by the County Executive.

A-7. Other:

A7.1. From time to time, special assistance may be required to respond to unique circumstances and/or animal care needs. Normally, such special assistance or care shall be the responsibility of the Contractor. Excessive cases may be addressed to the Executive's Office for special consideration.

A7.2. The Contractor will make every reasonable effort to establish and maintain a positive working relationship with all organizations concerned with animal welfare in Whatcom County.

A7.3. The Contractor shall represent the County as its primary animal control service provider for the unincorporated areas of Whatcom County. As such, the Contractor will be expected to provide excellent customer service and public relations. The Contractor shall not be expected to operate beyond the scope of this Agreement in the County's interest unless specifically requested to do so by an appropriate representative of the County. The County will not agree to any expense beyond the terms of this Agreement without preauthorization by an official of the County empowered to so bind the County.

A7.4. The Contractor under this Agreement is acting in a law enforcement capacity. As such, animal control officers may be called as government witnesses in criminal prosecutions. Contractor is thus responsible to provide Brady evidence pursuant to the Whatcom County Prosecuting Attorney Office's *Brady Policy and Protocol, Exhibit F*.

A-8. Activities Not Covered: The Contractor shall not be responsible under the terms of this agreement for the following items:

A8.1. Receiving wild, non-domestic animals into the shelter facility or care of the Contractor.

A8.2. Responding to complaints or incidents involving wild animals, except where it is in the interest of public safety. Contractor will stand by to assist a state agency, law enforcement agency or any wild life animal rescue group when the presence of a wild animal, dead or alive, is on a public roadway or within the right-of-way. Contractor will attempt to move the animal from the right of way traffic lanes.

A8.3. Rehabilitating and restoring to health animals that have been injured, neglected or abused that is not required by state law or county ordinance.

A8.4. Responding to non-emergent calls or complaints that have not been reviewed and approved for after-hours call-out by the Sheriff's office.

A8.5. Providing other services or activities that are not reasonably related to the contracted services or the intent of this Agreement, and that create an undue finance burden on the Contractor.

EXHIBIT "B"
(COMPENSATION)

As consideration for the services provided pursuant to Exhibit A. Scope of work, the county agrees to compensate the contractor \$33,177.50 per month consistent with exhibit C. Program Budget. Contractor will provide quarterly activity reports and upon request provide source documents such as payroll summaries identifying employee, hours worked and amount of compensation. Compensation shall not exceed a total of \$398,130.

Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the contractor's expense.

B-1. Animal Control & License Fees:

B1.1. The following animal control and license fees are authorized in the Whatcom County Unified Fee Schedule, effective January 1, 2019, through Budget Ordinance # 2018-076:

Description	Fee	Comments
Board/Care - Domestic Animals	\$15	Per Day
Board/Care - Large Livestock	\$40	Per Day after 24 hours
Board/Care - Small Livestock	\$40	Per Day after 24 hours
Boarding Fee/Special Requirements	\$40	Per Day
Call Out Fee (Livestock at Large)	\$50	
Impoundment - Cats and other small animals 1st - Altered and wearing ID	\$25	Per Imp/12 mo period
Impoundment - Cats and other small animals 2nd - Altered and wearing ID	\$45	Per Imp/12 mo period
Impoundment - Cats and other small animals 3rd - Altered and wearing ID	\$65	Per Imp/12 mo period
Impoundment - Cats and other small animals 4th + - Altered and wearing ID	\$100	Per Imp/12 mo period
Impoundment - Cats and other small animals 1st - Altered and w/o ID	\$45	Per Imp/12 mo period
Impoundment - Cats and other small animals 2nd - Altered and w/o ID	\$65	Per Imp/12 mo period
Impoundment - Cats and other small animals 3rd - Altered and w/o ID	\$85	Per Imp/12 mo period
Impoundment - Cats and other small animals 4th + - Altered and w/o ID	\$120	Per Imp/12 mo period
Impoundment - Cats and other small animals 1st - Unaltered and wearing ID	\$45	Per Imp/12 mo period
Impoundment - Cats and other small animals 2nd - Unaltered and wearing ID	\$65	Per Imp/12 mo period
Impoundment - Cats and other small animals 3rd - Unaltered and wearing ID	\$85	Per Imp/12 mo period
Impoundment - Cats and other small animals 4th + - Unaltered and wearing ID	\$120	Per Imp/12 mo period
Impoundment - Cats and other small animals 1st - Unaltered and w/o ID	\$65	Per Imp/12 mo period
Impoundment - Cats and other small animals 2nd - Unaltered and w/o ID	\$85	Per Imp/12 mo period
Impoundment - Cats and other small animals 3rd - Unaltered and w/o ID	\$105	Per Imp/12 mo period
Impoundment - Cats and other small animals 4th + - Unaltered and w/o ID	\$140	Per Imp/12 mo period
Impoundment - Dogs 1st - Altered and wearing current license	\$40	Per Imp/12 mo period
Impoundment - Dogs 2nd - Altered and wearing current license	\$60	Per Imp/12 mo period
Impoundment - Dogs 3rd - Altered and wearing current license	\$80	Per Imp/12 mo period
Impoundment - Dogs 4th + - Altered and wearing current license	\$150	Per Imp/12 mo period
Impoundment - Dogs 1st - Altered and unlicensed or not wearing license	\$60	Per Imp/12 mo period
Impoundment - Dogs 2nd - Altered and unlicensed or not wearing license	\$80	Per Imp/12 mo period
Impoundment - Dogs 3rd - Altered and unlicensed or not wearing license	\$100	Per Imp/12 mo period
Impoundment - Dogs 4th + - Altered and unlicensed or not wearing license	\$170	Per Imp/12 mo period
Impoundment - Dogs 1st - Unaltered and wearing current license	\$60	Per Imp/12 mo period
Impoundment - Dogs 2nd - Unaltered and wearing current license	\$80	Per Imp/12 mo period
Impoundment - Dogs 3rd - Unaltered and wearing current license	\$100	Per Imp/12 mo period
Impoundment - Dogs 4th + - Unaltered and wearing current license	\$170	Per Imp/12 mo period
Impoundment - Dogs 1st - Unaltered and unlicensed or not wearing license	\$80	Per Imp/12 mo period
Impoundment - Dogs 2nd - Unaltered and unlicensed or not wearing license	\$100	Per Imp/12 mo period
Impoundment - Dogs 3rd - Unaltered and unlicensed or not wearing license	\$120	Per Imp/12 mo period
Impoundment - Dogs 4th + - Unaltered and unlicensed or not wearing license	\$190	Per Imp/12 mo period
Impoundment - Large Livestock 1st	\$75	Per Imp/12 mo period
Impoundment - Large Livestock 2nd	\$100	Per Imp/12 mo period

Impoundment - Large Livestock 3rd	\$125	Per Imp/12 mo period
Impoundment - Large Livestock 4th +	\$200	Per Imp/12 mo period
Impoundment - Small Livestock 1st	\$60	Per Imp/12 mo period
Impoundment - Small Livestock 2nd	\$80	Per Imp/12 mo period
Impoundment - Small Livestock 3rd	\$100	Per Imp/12 mo period
Impoundment - Small Livestock 4th +	\$150	Per Imp/12 mo period
License Fee - Wild or Exotic Animal - Initial License	\$500	
License Fee - Wild or Exotic Animal - Annual Renewal	\$100	
License Fee - Altered Dog	\$11	
License Fee - Unaltered Dog	\$41	
License Fee - Past Due - Additional	\$10	Added to License Fee
Multi-Dog License	\$65	
Owner Release Fee	\$50	
Owner Release Fee - Additional for Litter w/Mother	\$10	
Pickup/Disposition Fee	\$55	
Pickup/Disposition Fee - Each Additional Animal and/or Litter w/Mother	\$25	Same trip
Registration Fee - Potentially Dangerous Dog	\$100	
Registration Fee - Dangerous Dog	\$150	
Veterinarian Fees and Medications during Boarding/Impoundment if required	Cost	Actual Costs Charged

B1.2. Accounting requirements imposed by the State of Washington require that all fees included in the Unified Fee Schedule be appropriately accounted for. To comply with this requirement the Contractor will be required to submit a monthly report detailing all fees collected. This report will be delivered to the County Executive.

B1.3. Contractor's Fees: The Contractor shall report the amount of fees collected on the quarterly report submitted to the County. The Contractor shall be solely responsible for the collection of the following fees as approved through the County Unified Fee Schedule:

1. License fees.
2. Spay/neuter clinic revenue paid to the Contractor/veterinarian.
3. Purchase charges related to the adoption of animals.
4. Vaccination clinic revenue paid to the Contractor/veterinarian.
5. Other similar or like fees as approved by the County.

B1.4. The County shall assist the Contractor in recovering exceptional costs from owners or other responsible parties, for the care of animals taken into custody or maintained by the Contractor, on behalf of the County. The appropriateness and the extent of action taken or to be taken by the County shall be determined by and at the sole discretion of the County.

B-2. Consideration: As consideration for the services provided the County agrees to reimburse the Contractor as follows:

B2.1. Unless specifically approved by County Council as a part of animal control and license fees, the Contractor shall be responsible for the administration of any and all animal licensing programs. All animal control and license fees, listed in Section B1.1 will be collected and retained by the Contractor as outlined in B1.3 and reported to the County as outlined in B1.2.

B2.2. The Contractor shall not receive any additional compensation for after-hours call-outs. Necessity for questioned after-hours call-outs shall be determined and authorized by the Sheriff's sergeant, shift supervisor, or duty staff officer.

B2.3. All payments under this Agreement are considered reimbursement for services rendered. Request for each monthly payment shall be by invoice showing what services were rendered so as to comply with auditing requirements. The County agrees to make payment for services provided promptly in accordance with the County's customary procedures.

EXHIBIT "C"
Program Budget

WHATCOM HUMANE SOCIETY Budget Narrative	Budget 5/1/2019 – 4/30/2019
Wages-Shelter Services	168,267.19
Wages-Animal Control & Licensing	179,376.48
Wages-Administration	57,738.85
Subtotal-Wages	<hr/> 399,382.52
Animal Food	5,550.00
Disposal-Dead Animals	4,000.00
Insurance	
Insurance-Animal Control & Licensing	18,346.
Postage	2,500.00
Professional Services-Shelter Services	8,625.00
Professional Services-Animal Ctrl & Lic	200.00
Professional Services-Administration	5,250.00
Radio/Pager-Animal Control	1,500.00
Supplies-Medical	18,000.00
Supplies-Shelter Services	15,000.00
Supplies-Animal Control & Licensing	1,000.00
Telephone-Animal Control	2,700.00
Uniforms	500.00
Utilities	7,000.00
Vehicle fuel and maintenance	15,000.00
Subtotal-Expenses	<hr/> 106,121
Total	505,503.52
Income (Contractor collects and retains fees)	
License	27,000
License Late Fee	1,750.00
Impound	20,000
Board	4,800.00
Owner Release	4473.52
Dog Adoptions	20,800.00
Cat Adoptions	23,000.00
Microchip	2,500.00
Other Animal Adoption	2,600.00
Trap Rental	450.00
Total	<hr/> 107,373.52
TOTAL	398,130

**Exhibit D
Whatcom County Contractor's E-Verify Declaration Form**

I. CONTRACTOR INFORMATION

Contractor Name:	Whatcom Humane Society	Phone:	360-733-2080
Contact Person:	Laura Clark	Fax:	360-733-4746
Address:	2172 DIVISION STREET Bellingham, WA 98226		

II. E-VERIFY ENROLLMENT (check box and submit copy of MOU for verification)

Contractors with funded contracts of \$100,000 or more must be enrolled in E-Verify system. Work related subcontract is \$25,000 or higher. www.uscis.gov/e-verify

Contractor is enrolled in E-Verify; copy of the signed E-Verify Memorandum of Understanding is attached.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Signature 

Name LAURA A. CLARK

Date 12/8/2016

Title EXECUTIVE DIRECTOR

Exhibit E



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/9/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Hub International Northwest LLC 110 Unity St. Bellingham WA 98225	CONTACT NAME: PHONE (A/C, No, Ext): 360-647-9000 FAX (A/C, No): 360-734-8496 E-MAIL ADDRESS: now.bellinghaminfo@hubinternational.com
INSURED Whatcom Humane Society 2172 Division Street Bellingham WA 98226	WHATHUM-01 INSURER(S) AFFORDING COVERAGE INSURER A : Indian Harbor Insurance Company NAIC # 36940 INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER: 2097730987** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/> A					<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Police Professional Liability	Y		PPL0952059	1/15/2019	1/15/2020	Per Occurrence 1,000,000 Aggregate 1,000,000 Retention 25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Per policy forms and conditions: Additional Insured form #PGU 1001 04 17.

CERTIFICATE HOLDER Whatcom County 311 Grand Ave Ste 108 Bellingham WA 98225	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	--

WHATCOM COUNTY PROSECUTING ATTORNEY

ERIC J. RICHEY

Whatcom County Courthouse
311 Grand Avenue, Suite 201
Bellingham, Washington 98225-4079
(360) 778-5710 /Main Office FAX (360)778-5711
Appellate FAX (360) 778-5712



Brady Policies and Protocols

Adopted April, 9 2019

A handwritten signature in black ink, which appears to be "Eric J. Richey", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval shape.

Eric J. Richey WSBA# 22860

I. Overview

In *Brady v. Maryland*, the United States Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Strickler v. Green*, 527 U.S. 263 (1999); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Brady*, 373 U.S. 83, 87 (1963). It is the policy of the Whatcom County Prosecutor's Office to strictly adhere to our *Brady* obligations, while remaining mindful of the statutory and privacy rights of peace officers involved.

It is the policy of this office to resolve questions related to *Brady* in favor of disclosure, and this protocol does not change that policy or our interpretation of our obligations under CrR 4.7. This protocol focuses on how this office will handle and retain *Brady* material regarding witnesses who, due to their profession, are likely to testify in future cases. This will most often occur with police officers or other recurring government witnesses, such as employees of the crime lab or other experts who routinely testify for the State.

Allegations of misconduct by recurring government witnesses may come to our attention in a number of ways. For example, cases are sometimes submitted to the Prosecuting Attorney in which the recurring government witness is a suspect in a crime. Or, a deputy prosecuting attorney may develop concerns about whether certain conduct -- observed, reported or documented by others -- falls within the purview of *Brady*. At other times, a court may enter a factual finding, or rule on a request to disclose disciplinary information, that implicates *Brady*.

This written protocol is designed to achieve this goal, and to foster clarity and uniformity in the way *Brady* issues regarding recurring government witnesses are resolved. All Whatcom County deputy prosecuting attorneys are required to know and follow this protocol and all relevant law concerning *Brady* obligations. Internal training events will be held in addition to the regular trainings provided by the Washington Association of Prosecuting Attorneys.

This area of law is dynamic, so this protocol may be refined as further guidance is received from courts or the legislature, or as justice may require.

II. Basics of *Brady*

The United States Supreme Court's decision in *Brady v. Maryland* requires the prosecution to disclose to the defense any evidence that is "favorable to the accused" and "material" on the issue of guilt or punishment. *Brady*, 373 U.S. at 87. Failure to disclose violates the defendant's right to due process. *Id.* 86-87. The prosecutor's duty to disclose applies even if the defense has not requested that piece of information. Information known to law enforcement is deemed to be information within the prosecutor's knowledge, even if it is unknown to the prosecutor.

VII. The *Brady* List

A secure electronic database shall be maintained by the Panel with copies of all *Brady* material. Hard copies of any *Brady* material will be kept in a secure location. Access to the *Brady* materials will be limited to the members of the *Brady* panel and their support staff. The *Brady* materials will be considered to be attorney work product and will, in general, be considered to be exempt from disclosure under the Public Records Act (PRA), chapter 42. RCW. However, nothing in this policy shall affect the rights provided for by the PRA.

The *Brady* panel will conduct an audit of the *Brady* list immediately upon its formation. Witnesses on the *Brady* list will be classified as having either potential impeachment evidence (*Brady* material), or criminal convictions that do not encompass a crime of dishonesty or false statement. The only other information provided on the *Brady* list will be the name of the witness, the employing agency, and the date they were added to the list.

Ten years after a witness is added to the *Brady* list, and every five years thereafter, the *Brady* Panel will conduct a review of the witness's placement on the *Brady* list. The purpose of the review will be the consideration of whether the witness still satisfies the potential impeachment disclosure standard, by a preponderance of the evidence, presented upon review. The review will include, but not be limited to: a review of the initial materials that resulted in placement on the *Brady* list, any substantiated or unsubstantiated reports that would constitute *Brady* material occurring after placement on the *Brady* list, instances of impeachment with *Brady* information that occurred after placement on the *Brady* list, any ascertainable impact that impeachment had on factfinders after placement on the *Brady* list, and the potential vacation/expungement of criminal convictions. If the panel is satisfied that the witness no longer meets the standard for potential impeachment disclosure, by a preponderance of the evidence, the witness may be removed from the *Brady* list, or the *Brady* Panel may reserve the right to keep or remove the officer from the list as necessary to comply with our *Brady* obligations.

VIII. Procedures To Follow When A Deputy Prosecuting Attorney Discovers That A Potential Trial Witness Is On The *Brady* List

In all cases, and as early as is practical in the course of discovery, DPAs should cross reference the potential witnesses that might be called in their cases with the *Brady* List. When a DPA becomes aware that a subpoenaed witness is on the *Brady* list, the DPA should request more detail from the Panel about the nature of the *Brady* material. If the Chief Criminal Deputy and the DPA determine that the potential *Brady* material is not discoverable, due to the specific facts of the case and the witness's anticipated testimony, the DPA shall notify the *Brady* Panel.

In all other instances, the DPA should discuss with the Chief Criminal Deputy whether the material should be disclosed directly to the defense attorney, or if it should be submitted to the court for an in camera review. The DPA should also discuss with the Chief Criminal Deputy the need for a protective order. The DPA shall notify the *Brady* Panel if (1) they receive any new

information about the *Brady* material and/or (2) if a judge in their case makes a ruling regarding the admissibility of the *Brady* material.

IX. When Potential *Brady* Material Is Discovered During Trial Or Under Time Constraints

The DPA should talk to the Chief Criminal Deputy to determine an appropriate action. When time permits, the formal procedure should be utilized.

X. When A Deputy Prosecuting Attorney Learns About A Pending Investigation Of A Recurring Government Witness.

When a DPA is advised that an investigation is pending concerning a recurring government witness, the DPA shall notify the Chief Criminal Deputy immediately. The Chief Criminal Deputy will then notify the *Brady* Panel. That witness will then be added to a “pending review” list to be monitored regularly for sustained findings of misconduct related to dishonesty or falsehood. On pending cases involving the recurring government witness, the DPA shall notify defense counsel of the existence of the open investigation and direct further inquiry to the investigating agency. If the allegations are sustained and they involve misconduct related to dishonesty or falsehood, the investigating agency shall notify the *Brady* Panel pursuant to section IV of this protocol. The witness will then be added to the “*Brady* List.” If the allegations are determined to be unfounded, the witness will be removed from the “pending review” status.

“Exculpatory evidence” is evidence favorable to the defendant and likely to change the result on an issue of a defendant’s guilt or his or her eventual punishment if convicted. “Favorable evidence” includes not only exculpatory evidence but also evidence that may impeach the credibility of a government witness, whether that witness is a law enforcement officer or a civilian. *Strickler v. Greene*, 527 U.S. at 281-82. “Impeachment evidence” is defined by Evidence Rules 607, 608, and 609. It generally includes any evidence that can be used to impeach the credibility of a witness.

Brady evidence regarding recurring government witnesses usually falls into one of several general categories: misconduct involving dishonesty; evidence tending to show a bias or some motive to lie; and -- for expert witnesses -- a pattern of confirmed performance errors that could compromise the expert's conclusions.

The prosecution does not have an obligation to disclose preliminary, challenged or speculative information. *United States v. Agurs*, 427 U.S. 97, 109 n.16 (1976). Nevertheless, the United States Supreme Court has stated that “the prudent prosecutor will resolve doubtful questions in favor of disclosure.” *Id.* at 108. See also *United States v. Acosta*, 357 F.Supp.2d 1228, 1233 (2005) (recognizing that because it is extremely difficult, if not impossible, to discern before trial what evidence will be deemed “material” after trial, the government should resolve doubts in favor of full disclosure). Thus, we should err on the side of disclosing evidence that might be exculpatory, or that could serve as impeachment evidence, as early in discovery as is possible.

Information that is disclosed is not necessarily admissible; these issues must be kept separate. See *State v. Gregory*, 158 Wn.2d 759, 797 (2006). Thus, there will be many times when we disclose *Brady* material, but argue strenuously against its admissibility. The mere fact that a recurring government witness has been added to the *Brady* list is not necessarily a comment by this office on: the admissibility of evidence, that individual's future viability as a witness, on his or her reputation, or on the person's ability to serve in his or her current capacity.

III. Whatcom County Prosecutor’s *Brady* Panel Composition

A *Brady* Panel will be established to implement this protocol. The Panel will be comprised of four Senior Deputy Prosecuting Attorneys and led by the Whatcom County Prosecutor or his designee. A quorum shall consist of three or more members; a majority vote of those present shall determine a given issue. The Panel will keep a record of all the decisions made in the review proceedings described in section VI.

IV. Information Submitted To Us By Law Enforcement And Government Agencies

Law enforcement agencies will be asked to provide the *Brady* Panel with information on sustained findings of misconduct involving officer dishonesty. This includes any sustained findings of false verbal or written statements. The *Brady* Panel will also request all criminal convictions pursuant to CrR 4.7 and *Brady*. The *Brady* Panel will also request any sustained findings for biased policing, racial profiling, malicious harassment, or any other misconduct that

suggests bias against a class of people (e.g. race, ethnicity, age, sexual orientation, gender, disability, economic status, or other personal characteristic).

Officers with sustained findings of misconduct involving dishonesty, bias, or criminal convictions pursuant to ER 609, will be added to the *Brady* list without additional review by the *Brady* Panel. If new evidence comes to light or if the finding of misconduct is later dismissed, the *Brady* Panel should be informed so it can decide whether the officer should be removed from the *Brady* list or if other modifications need to be made. In general, negotiated resolutions in lieu of discipline will not result in an officer being removed from the list. In general, dismissals of an allegation obtained through recognized due process procedures will result in the officer being removed from the list. In both scenarios, we reserve the right to keep or remove the officer from the list as necessary to comply with our *Brady* obligations.

Government agencies, such as crime labs, will also be asked to provide the *Brady* Panel with information on sustained findings of dishonesty, bias, and criminal convictions pursuant to CrR 4.7. In addition, government agencies will be asked to provide the *Brady* Panel with information on a confirmed performance error that compromises the expert's final conclusions. As with officers, State expert witnesses with sustained findings of misconduct involving dishonesty, bias, criminal convictions pursuant to ER 609, or confirmed performance errors that compromise the expert's conclusions, will be added to the *Brady* list without additional review by the *Brady* Panel. If new evidence comes to light or the finding is overturned, the *Brady* Panel should be informed so it can decide whether the employee should be removed from the *Brady* list.

The *Brady* Panel conclusions will be limited to whether the recurring government witness will be added to the *Brady* list. The Panel will not give advisory opinions.

V. Deputy Prosecuting Attorney Responsibilities

1. If a DPA or any staff member becomes aware of potential *Brady* material regarding a recurring government witness, the deputy or staff member shall inform the Chief Criminal Deputy.
2. If the Chief Criminal Deputy believes that the information could constitute *Brady* material, he or she will direct the DPA to prepare a memorandum summarizing the material. The memo should focus only on facts and avoid conclusions or speculation.
3. The Chief Criminal Deputy shall present the memorandum and all related material/evidence to the *Brady* Panel.

VI. *Brady* Panel Review Procedure

1. When the Panel receives a notification form from the Chief Criminal Deputy, it will make an initial determination by asking the following question:

If proven true, does the allegation constitute *Brady* material?

- a. If the answer is no, the inquiry is finished.
- b. If the answer is yes, the formal review will continue.

2. The Panel may conduct any additional investigation it deems necessary. The Panel will review the memorandum, related materials, and any additional evidence it obtains, to answer the following question:

Is the Panel convinced by a preponderance of the evidence that the allegation is true?

- a. If the answer is no, the inquiry is finished.
- b. If the answer is yes, the government witness and the relevant agency will be notified per section 3.

3. The Panel will notify the relevant agency that potential *Brady* material has been found. It will be left to the discretion of the relevant agency to notify the witness.

- a. The witness and the relevant agency will be allowed to submit a response, with additional evidence they would like the Panel to consider, in writing within 30 days from the date of notification.

* Witnesses should be aware that if a trial date is pending, the Panel may decide that it is necessary to disclose the material in its possession before a response has been submitted.

- b. If no response is received within 30 days, the government witness shall be added to the *Brady* list and notification should be sent to the witness and the relevant agency.

4. If a response is received, the Panel will review the additional evidence and again ask the following question:

Is the Panel convinced by a preponderance of the evidence that the allegation is true?

- a. If the answer is no, the inquiry is finished. The relevant agency will be informed of the decision.

If new evidence comes to light after the time period provided for a response under section 3(a) has expired, the witness may send that evidence to the Panel and ask it to reconsider its decision. Additionally, the Panel may reconsider a witness's placement on the *Brady* list based upon court rulings that help define or clarify the issue. The Panel may modify this procedure when necessary.